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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,520	08/03/2001	Donald Pham	CISCO-4113	8849

7590 07/11/2006

Timothy A. Brisson
Sierra Patent Group
P.O. Box 6149
Stateline, NV 89449

EXAMINER

DUONG, DUC T

ART UNIT	PAPER NUMBER
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2616

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

RD

Office Action Summary	Application No. 09/922,520	Applicant(s) PHAM ET AL.	
	Examiner Duc T. Duong	Art Unit 2663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-7,11-13,17-21 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-7,11-13,17-21 and 25-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 7, 13, 19, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bournas (US Patent 6,201,791 B1).

Regarding to claims 1, 7, 13, and 19, Bournas discloses an apparatus for measuring the performance of a scalable network (fig. 1) comprising means 112 for preparing the network for testing (fig. 5 col. 6 lines 3-10); means for establishing an IP routing path 102/106 for a session to be tested (fig. 1 col. 3 lines 38-49); means 114 for sending a constant stream of packets to a client node 108 (fig. 5 col. 6 lines 13-15; noted the N packets are sent in a loop in an immediate succession, and thus the packets are sent in constant stream); and means 116 for counting said received packets (fig. 5 and 8 col. 6 lines 15-26); and establishing a peak performance rate (optimal window size) as the highest rate with no packet dropout (fig. 6 col. 7 lines 41-46; noted the optimal window size (rate) is calculated once all ACKs for test packets are received, and thus the optimal window size is calculated with no packet loss).

Bournas fails to teach explicitly the routing path is a static IP route.

However, it would have been obvious to a person of ordinary skill in the art, at the time of the invention, to arrange the IP routing path 102/106 in Bournas as static

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since such arrangement is a matter of choice that would serve the same purpose, and thus constitutes no new inventive concept.

Regarding to claim 29, Bournas discloses the packet generator 14 is configured to perform testing using software 116 (fig. 1 col. 3 lines 61-64).

3. Claims 5, 6, 11, 12, 17, 18, 20, 21, and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bournas in view of Beverly, IV (U.S. Patent 6,732,182 B1).

Regarding to claims 5, 6, 11, 12, 17, 18, 20, 21, and 25-28, Bournas discloses all the limitations with respect to claims 1, 7, 13, and 19 except for the constant stream of packets are sent over an OC-3 or OC-12 level networks. However, Beverly discloses a system for generating a packet loss report, wherein test packets are sends over an OC-3 or OC-12 level (col. 4 lines 21-26) via Ethernet pathways 224-228 (fig. 2 col. 6 lines 16-20). Thus, it would have been obvious to a person of ordinary skill in the art to employ a transmission of test packets over OC-3 and OC-12 network via Ethernet pathways as taught by Beverly in Bournas's system for measuring the performance of high speed networks, such as SONET or SDH.

4. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bournas in view of Dawson (US Patent 6625,764 B1).

Regarding to claim 30, Bournas discloses all the limitations with respect to claim 19, except for a test configuration file is download from a TFTP server. However, Dawson discloses a system under testing using a download CRC calculation from a TFTP server 30 (fig. 1 col. 5 lines 6-17). Thus, it would have been obvious to a person

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of ordinary skill in the art to employ a CRC calculation value download from a server as taught by Dawson in Bournas's system ensure the system under test functions properly.

Pertinent Cited Preferences

5. US Patent 6,243,832 B1 and US Patent 6,816,464.

Response to Arguments

6. Applicant's arguments filed February 6, 2006 have been fully considered but they are not persuasive. Regarding applicant's argument on page 7 requesting evidence for establishing a static IP route. In response, the examiner has cited the additional cited preferences in the above showing testing of network using static IP route (in US Patent 6,243,832 B1 col. 11 lines 50-63 and in US Patent 6,816,464 B1 col. 10 lines 53-62). Regarding to applicant's argument on page 7, Bournas count the received packets at the first node and wherein the amended claims count the received packets at the second node. In response, the examiner would like to point out in the amended claims as recited shows no such assertion of counting the received packets at the second node. All the amended claims recited are **the received packets are count at the packet count unit**, it does not claim where is the count packet unit, and thus it can interpret to be anywhere. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir.

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1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, all the essential elements of the claims except for the path of testing is a static IP path, and thus it appears the path of testing is depend more upon the choice of the inventor and convenience and availability of the machines and tools necessary to performs the testing, than on the inventive concept. See *In re Larson*, 144 USPQ 347 (CCPA 1965), and *In re Lcokhart*, 90 USPQ 214 (CCPA 1951). Based on the reasons set forth here the rejections are maintained.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on 571-272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DD
DD

A handwritten signature in black ink, appearing to read 'Huy D. Vu', with a long horizontal stroke extending to the right.

HUY D. VU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600